

JANET M. HEROLD
Regional Solicitor
IAN H. ELIASOPH (CSBN 227557)
DANIELLE L. JABERG (CSBN 256653)
Counsel for ERISA
GRACE A. KIM, Trial Attorney (CSBN 247456)
Office of the Solicitor
United States Department of Labor
350 S. Figueroa St., Suite 370
Los Angeles, California 90071
Direct: (213) 894-3950
Facsimile: (213) 894-2064
Email: kim.grace@dol.gov

Attorneys for Plaintiff
United States Department of Labor

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

**AXIS BENEFIT ADMINISTRATORS,
INC., d/b/a AXIS HEALTH PARTNERS**, an
Oregon corporation;

**KHA ACCOUNTANTS & ADVISORS,
P.C.**, a Texas corporation;

DARREN BOTTINELLI, an individual;

Defendants.

Case No. CV 15-cv-02416-SI

CONSENT JUDGMENT & ORDER

Plaintiff THOMAS E. PEREZ, Secretary of Labor, United States Department of Labor (“Plaintiff” or the “Secretary”), pursuant to his authority under Sections 502(a)(2) and (5) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C.

§§ 1132(a)(2) and (5), has filed a Complaint against, among others, AXIS BENEFIT ADMINISTRATORS, INC., d/b/a AXIS HEALTH PARTNERS, an Oregon corporation (“Axis”), and DARREN BOTTINELLI, an individual (“Bottinelli”). The Secretary, Axis, and Bottinelli (the “Parties”) have agreed to resolve the matters in controversy in this civil action and consent to the entry of this consent judgment (“Consent Judgment” or “Judgment”) in accordance herewith.

1. The Parties admit that the Court has jurisdiction over this action pursuant to ERISA Section 502(e)(1), 29 U.S.C. § 1132(e)(1), and that venue lies in the District Court for the District of Oregon pursuant to ERISA Section 502(e)(2), 29 U.S.C. § 1132(e)(2).
2. The Secretary has alleged that Defendants Axis and Bottinelli violated provisions of ERISA in relation to Axis’s work as service provider to several ERISA covered employee benefit plans (“Plans”) and as set forth more fully in the Complaint. Defendants Axis and Bottinelli neither admit nor deny those allegations.
3. The Parties agree to entry of this Consent Judgment. The Parties further agree that this Consent Judgment shall fully settle all claims of the Secretary asserted in the Complaint.
4. Defendants Axis and Bottinelli acknowledge receipt of the Complaint and hereby waive service of process of the Summons and the Complaint.
5. The Parties expressly waive Findings of Fact and Conclusions of Law.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Defendants Axis and Bottinelli are hereby removed as fiduciaries to the Plans.
2. Defendants Axis and Bottinelli are permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. § 1001-1191c.

3. Defendants Axis and Bottinelli are permanently enjoined and restrained from serving as fiduciaries or service providers in connection with any ERISA covered plan.
4. Defendants Axis and Bottinelli each expressly waive any and all claims of any nature which they may have against the Secretary, the United States Department of Labor, or any of its officers, agents, attorneys, employees or representatives, arising out of, or in connection with, the allegations contained in the Complaint on file in this action, any other proceedings or investigation incident thereto, or based on the Equal Access to Justice Act, as amended.
5. The Parties shall each bear their own costs, expenses, and attorney's fees incurred in connection with any stage of this proceeding, including but not limited to attorney's fees which may be available under the Equal Access to Justice Act, as amended.
6. Nothing in this Consent Judgment and Order is binding on any governmental agency other than the United States Department of Labor, Employee Benefits Security Administration, or on any private party not named in this action.
7. This Court retains jurisdiction of this action for purposes of enforcing compliance with the terms of this Consent Judgment and Order.
8. By signing their names to this Consent Judgment and Order, the Parties each represent that they are informed and understand the effect and purpose of this Consent Judgment and Order.
9. Any person signing this Consent Judgment and Order on behalf of a party expressly acknowledges and represents that he or she has the authority to sign for, and legally bind, that party.
10. This Consent Judgment and Order may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

1 The Court directs the entry of this Consent Judgment and Order as a final order.
2 **IT IS SO ORDERED.**

3
4 Dated: December 30, 2015.



5 Michael H. Simon

6 United States District Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Entry of this Consent Judgment and Order is hereby consented to:
2

3 M. PATRICIA SMITH
4 Solicitor of Labor

5 JANET M. HEROLD
6 Regional Solicitor

7 IAN H. ELIASOPH
8 Counsel for ERISA
9

10 Dated: 12/17/2015

/s/ Grace A. Kim

11 GRACE A. KIM
12 Trial Attorney
13 Attorneys for Plaintiff Secretary of Labor
14
15

16 Dated: 12/17/2015

/s/ Darren Bottinelli

17 For Defendant AXIS BENEFIT
18 ADMINISTRATORS, INC., d/b/a AXIS
19 HEALTH PARTNERS
20

21 By: Darren Bottinelli, CEO
22 (Print Name & Title)
23
24

25 Dated: 12/17/2015

/s/ Darren Bottinelli

26 Defendant DARREN BOTTINELLI
27
28

1 This Consent Judgment is approved as to form by:

2
3 Dated: 12/17/2015

/s/ Thomas L. Hutchinson
THOMAS L. HUTCHINSON
Bullivant Houser Bailey PC
Attorney for Defendants